IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.364 OF 2006

IN

B.C.C.C. L.C. SUIT NO.3731 OF 2005

Faustine D'Cunha ...Appellant

Versus

Rizvanullah Jainullah Chaudhary

& Ors. ...Respondents

.....

Mr.J.N.Jayale for Appellant.

Mr.Joaquim Reis i/b Mr.Rajesh N.Kachare for Respondents.

.....

CORAM: A.M.KHANWILKAR, J.

JUNE 19, 2006.

P.C.

1. Heard Counsel for the parties. Perused the relevant pleadings.

2. I find no reason to depart from the conclusion reached by the Court below that no

sufficient cause is made out by the Appellant/Plaintiff for the inaction and the casual manner in which the matter is handled, inspite of repeated extension given by the Trial Court for effecting service of summons. The matter was listed on 23rd September 2005 before the Trial Court when it was noticed that inspite of directions given in the past, writ of summons was not placed on record. Time was granted to the Appellant/Plaintiff till 28th October 2005. Inspite of indulgence, neither the Plaintiff nor his Advocate took any initiative in that behalf. Once again, the Court extended time to effect service of writ of summons by order dated 8th December 2005 at the request of Advocate for the Appellant/Plaintiff. Inspite of this extension, no steps were taken to serve the writ of summons. It is in this backdrop, the Trial Court dismissed the Plaint on 2nd February 2006 when the summons was made returnable, as no steps were taken by the Appellant/Plaintiff till then; On that date, the advocate for the Appellant did not appear before the Court. Indeed, the Appellant/Plaintiff appeared before the Court and asked for further

time, which request was declined by the Trial Court and the Suit came to be dismissed.

3. No fault can be found with the approach of the Trial Court. Sufficient indulgence was shown to the Appellant/Plaintiff. The affidavit which has been filed in support of the Notice of Motion No.590 of 2006 for restoration of the Suit and recalling the order dated 2nd February 2006 makes no attempt to mention tangible ground or sufficient cause for showing that indulgence, except making grievance about the inaction of the Advocate. No explanation is offered as to what prevented the Appellant/Plaintiff to comply with the Trial Court's direction on 23rd September 2005, once again on 28th October 2005 and lastly on 8th December 2005. Merely blaming the Advocate is of no consequence. The Appellant/Plaintiff cannot absolve himself of the requirement to take steps to ensure service of summons before the returnable date, especially when more than one indulgence was granted by the Trial Court.

4. Taking overall view of the matter, I am

not inclined to interfere in this Appeal.

5. There is additional reason which needs to be recorded which, however, is not the basis of passing the impugned order. Counsel appearing for the Respondent points out that the Respondent has already transferred his right, title and interest in the suit property in favour of the third party. If it is so, the Appellant/Plaintiff will have to pursue remedy against third party, if so advised.

6. Taking any view of the matter, no interference in this Appeal from Order is warranted. Hence, dismissed.

A.M.KHANWILKAR, J.